



Understanding Surviving Spouse Ownership Requirements

Issue:

This brief defines who qualifies as a surviving spouse and discusses the requirements for a surviving spouse to hold an ownership role in a Service-Disabled Veteran-Owned Small Business (SDVOSB).

(For purposes of this brief, applicant refers to the business entity applying for verification; and participant refers to a business entity that has already been verified.)

The Regulation:

38 C.F.R. § 74.1 provides as follows:

Surviving spouse has the same meaning given to such term in 13 CFR part 125.

13 C.F.R. § 125.11 provides as follows:

Surviving spouse has the meaning given the term in 38 U.S.C. 101(3).

38 USC § 101(3) provides as follows:

The term "surviving spouse" means (except for purposes of chapter 19 of this title) a person of the opposite sex who was the spouse of a veteran at the time of the veteran's death, and who lived with the veteran continuously from the date of marriage to the date of the veteran's death (except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse) and who has not remarried or (in cases not involving remarriage) has not since the death of the veteran, and after September 19, 1962, lived with another person and held himself or herself

out openly to the public to be the spouse of such other person.

13 C.F.R. § 125.12(i) provides as follows:

Surviving spouse. (1) A small business concern owned and controlled by one or more service-disabled veterans immediately prior to the death of a service-disabled veteran who was the owner of the concern, the death of whom causes the concern to be less than 51 percent owned by one or more service-disabled veterans, will continue to qualify as a small business concern owned and controlled by service-disabled veterans during the time period if:

(i) The surviving spouse of the deceased veteran acquires such veteran's ownership interest in such concern;

(ii) Such veteran had a service-connected disability (as defined in 38 U.S.C. 101(16)) rated as 100 percent disabling under the laws administered by the Secretary of Veterans Affairs or such veteran died as a result of a service-connected disability; and

(iii) For a participant, immediately prior to the death of such veteran, and during the period described in paragraph (i)(2) of this section, the small business concern is included in the database described in 38 U.S.C. 8127(f).

(2) The time period described in paragraph (i)(1)(iii) of this section is the time period beginning on the date of the veteran's death and ending on the earlier of—

(i) The date on which the surviving spouse remarries;

(ii) The date on which the surviving spouse relinquishes an ownership interest in the small business concern; or

(iii) The date that is 10 years after the date of the death of the veteran.

38 C.F.R. § 74.3(b)(3) provides as follows:

A participant may remain eligible after a change in its ownership or business structure, so long as one or more veterans own and control it after the change. The participant must file an updated VA Form 0877 and supporting documentation identifying the new veteran owners or the new business interest ...[w]here the transfer results from the death or incapacity due to a serious, long-term illness or injury of an eligible principal, prior approval is not required, but the concern must file an updated VA Form 0877 with CVE within 60 days of the change.

What This Means:

- CVE does not determine who is a surviving spouse. CVE determines whether a particular surviving spouse qualifies for the Veterans First Contracting Program.
- In all cases, CVE has to determine whether the interest held by the deceased Service-Disabled Veteran (SDV) would cause ownership in the SDVOSB to drop below the required 51 percent ownership by SDVs.
- If the death of the SDV does not cause the concern to be less than 51 percent owned by one or more SDVs, the inquiry ends and the spouse of the deceased SDV will not be recognized as a surviving spouse for purposes of the Veterans First Contracting Program.
- If the death of the SDV causes the concern to be less than 51 percent owned by one or more SDVs, CVE is required to determine whether the person claiming surviving spouse status is identified as such in the Beneficiary Identification and Records Locator Subsystem (BIRLS).
- To be an eligible surviving spouse, the individual must be listed as the surviving spouse in BIRLS.
- If the individual is not listed in BIRLS as the surviving spouse, CVE cannot recognize the individual as the surviving spouse for purposes of the Veterans First Contracting Program.
- A company may lose SDVOSB status if it is determined that the combined ownership interest of the remaining SDVs, if any, and the surviving spouse does not equal at least 51 percent.
- If the person claiming surviving spouse status is unable to register as the deceased Veteran's surviving spouse, CVE will examine the company as though the person claiming such status was a non-SDV.
- To determine eligibility of the surviving spouse, the deceased SDV must, at the time of death, have died as the result of a service-connected disability or had a 100 percent service-connected disability. CVE uses BIRLS to confirm whether the deceased SDV satisfies this requirement.
- An individual attempting to qualify using the 100 percent service connected disability exception would not qualify if the deceased Veteran did not have **at least one** single service connected disability rated at 100 percent. (Emphasis added)
- A deceased Veteran with two or more service connected disabilities which

collectively equal a rating of 100 percent, no one of which is individually rated at 100 percent, does not qualify for the 100 percent disability exception.

- CVE must also confirm that the spouse of the deceased SDV applying for surviving spouse status has received the deceased SDV's ownership interest in the company. This is evidenced by wills, company business documents, and Letters of Explanation. Not everyone registered as a surviving spouse in BIRLS is entitled to step in the shoes of the deceased SDV.
- A surviving spouse will not qualify if the deceased SDV's ownership interest has been willed or otherwise transferred to someone else.
- One implication of the language in 13 C.F.R. §125.12(i) is - if a company is previously verified and the SDV owner dies leaving a surviving spouse to take over, if the spouse allows the verification to lapse at any point in time, it will no longer qualify for the Veterans First Contracting Program.
- Once it is determined that the spouse of the deceased SDV qualifies as a surviving spouse for purposes of the Veterans First Contracting Program, CVE will require such surviving spouse to complete, if not already completed, a new VA Form 0877, identifying himself or herself, as the surviving spouse. The regulations require any change in ownership to be reported to CVE within 60 days.
- CVE will also require the business to provide amended business documents (i.e., stock certificates, bylaws, operating agreements, stock ledgers, etc.) to recognize the new ownership.
- If it is determined that the spouse of the deceased Veteran does not qualify as the

surviving spouse, the person claiming surviving spouse status is directed to complete a new VA Form 0877 identifying himself or herself as either a non-Veteran, a Veteran or Service-Disabled Veteran, whichever is applicable.

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VA Office of Small and Disadvantaged Business Utilization

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